

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Whitney Beber	Team: Squad #6	CCRB Case #: 201809272	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 09/27/2018 10:20 PM	Location of Incident: [REDACTED]	Precinct: 32	18 Mo. SOL 3/27/2020	EO SOL 11/11/2020	
Date/Time CV Reported Tue, 11/06/2018 4:33 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 11/06/2018 4:33 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. Officers			Unknown
2. POM Jimmy Gutierrez	27000	957651	032 PCT
3. POM Kevin Viola	18818	962154	105 PCT
4. POM Christopher Gordon	14137	954884	032 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Asad Sardar	01074	962086	032 PCT
2. SGT Wilson Ramos	04892	931911	032 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christopher Gordon	Discourtesy: Police Officer Christopher Gordon spoke discourteously to § 87(2)(b)	[REDACTED]
B.POM Christopher Gordon	Force: Police Officer Christopher Gordon used physical force against § 87(2)(b)	[REDACTED]
C.POM Jimmy Gutierrez	Force: Police Officer Jimmy Gutierrez used physical force against § 87(2)(b)	[REDACTED]
D.POM Christopher Gordon	Force: Police Officer Christopher Gordon used physical force against § 87(2)(b)	[REDACTED]
E. Officers	Force: Officers used physical force against § 87(2)(b)	[REDACTED]
F.POM Kevin Viola	Force: Police Officer Kevin Viola used a Taser against § 87(2)(b)	[REDACTED]
G.POM Christopher Gordon	Force: Police Officer Christopher Gordon used physical force against § 87(2)(b)	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
H.POM Jimmy Gutierrez	Force: Police Officer Jimmy Gutierrez used physical force against § 87(2)(b)	

Case Summary

On November 6, 2018, § 87(2)(b) filed the following complaint with the Civilian Complaint Review Board (CCRB) via the Call Processing System. On November 6, 2018 the CCRB received the complaint.

On September 27, 2018, at approximately 10:20 p.m. § 87(2)(b) spoke with § 87(2)(b) and § 87(2)(b) outside of § 87(2)(b) in Manhattan, when Police Officer Christopher Gordon and Police Officer Jimmy Gutierrez of the 32nd Precinct approached in a marked police vehicle. § 87(2)(b) approached the police vehicle and asked Police Officer Gutierrez what was going on. Police Officer Gordon allegedly told § 87(2)(b) “fuck out of here,” (**Allegation A-Discourtesy**, § 87(2)(g)). Police Officer Gordon and Police Officer Gutierrez exited their vehicle and told § 87(2)(b) to get on the sidewalk. § 87(2)(b) walked across the street. Police Officer Gordon and Police Officer Gutierrez followed him and told him to come over. Additional officers arrived including Police Officer Kevin Viola and Police Officer Asad Sardar of the 32nd Precinct. Police Officer Gordon and Police Officer Gutierrez allegedly tackled § 87(2)(b) to the ground, (**Allegations B and C-Force**, § 87(2)(g)). § 87(2)(b) landed on the ground on of his stomach. Police Officer Gordon punched § 87(2)(b) (**Allegation D-Force**, § 87(2)(g)) in his chest. Unidentified officers allegedly punched him in his face and kicked § 87(2)(b) (**Allegation E-Force**, § 87(2)(g)). Officers told § 87(2)(b) to stop resisting. Police Officer Viola tasered § 87(2)(b) (**Allegation F- Force**, § 87(2)(g)). After he was tasered, he was handcuffed, dragged to a police vehicle and thrown into the police vehicle by Police Officer Gordon and Police Officer Gutierrez (**Allegations G and H- Force**, § 87(2)(g)). § 87(2)(b) was arrested and charged with § 87(2)(b).

§ 87(2)(b) provided a cell-phone video taken by § 87(2)(b) via email (BR01).

Findings and Recommendations

Allegation (A) Discourtesy: Police Officer Christopher Gordon spoke discourteously to § 87(2)(b)

It is undisputed that on September 27, 2018, that while PO Gordon and PO Gutierrez were in the vicinity of § 87(2)(b) § 87(2)(b) approached their police vehicle and asked the officers why they were there. It is undisputed that the officers told him to move to the sidewalk.

§ 87(2)(b) testified that he stopped to speak to § 87(2)(b) and § 87(2)(b) in front of § 87(2)(b) § 87(2)(b) had not been involved in any physical altercation or fight prior to speaking to § 87(2)(b) and § 87(2)(b). A police vehicle approached them from West 129th Street and parked in the crosswalk. As they continued to talk, the police shone the vehicle’s flood lights on them. § 87(2)(b) walked up to the police van and asked PO Gutierrez what was going on. § 87(2)(b) stated that something had occurred at West 129th Street. § 87(2)(b) testified that after approaching PO Gordon and PO Gutierrez’ vehicle, he asked why they were there. PO Gordon did not issue any other commands before telling him to “fuck out of here.” PO Gordon and PO Gutierrez exited their vehicle and told § 87(2)(b) to get on the sidewalk.

§ 87(2)(b) and § 87(2)(b) who were outside of § 87(2)(b) who § 87(2)(b) stated witnessed this incident, did not witness this portion of the incident. § 87(2)(b) was not sure what he heard officers say.

PO Gordon and PO Gutierrez responded to a radio call for a physical fight at West 129th Street and St. Nicholas Avenue in Manhattan. When they arrived, no one was fighting. There were groups of men, some of whom were pacing and cursing. PO Gutierrez and PO Gordon decided to activate their turret lights to make the men disperse. PO Gordon stated that they wanted to diffuse another physical fight. § 87(2)(b) approached their police vehicle, he asked why the officers were there. PO Gutierrez and PO Gordon told § 87(2)(b) they were there to ensure that the crowd dispersed. PO Gordon and PO Gutierrez are consistent that PO Gordon did not tell § 87(2)(b) to “fuck out of here.” § 87(2)(b) became angry, belligerent and started cursed at the officers.

The event chronology of EVENT #§ 87(2)(b) noted that a physical fight occurred at West 129th Street and St. Nicholas Avenue at 9:50 p.m. (BR12) This EVENT was duplicated into EVENT #§ 87(2)(b) and canceled.

The 911 caller stated that a physical fight occurred between eight black males on the corner of St. Nicholas Avenue and West 129th Street (BR13). The Radio message stated that PO Gordon and PO Gutierrez- unit 32C would respond (BR14).

It is undisputed that PO Gutierrez and PO Gordon originally responded to a call for a physical fight and that officers attempted to disperse a group of males with their vehicle’s lights, and that § 87(2)(b) approached PO Gordon and PO Gutierrez while they were in their vehicle. It is undisputed that § 87(2)(b) and the officers had a conversation during which § 87(2)(b) was issued multiple commands. However, it is disputed that one of those commands was PO Gordon telling § 87(2)(b) to “fuck out of here.”

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Allegation (B) Force: Police Officer Christopher Gordon used physical force against § 87(2)(b)

Allegation (C) Force: Police Officer Jimmy Gutierrez used physical force against § 87(2)(b)

After PO Gordon and PO Gutierrez told him to get on the sidewalk, § 87(2)(b) walked towards the sidewalk. He backed up and walked away from the officers. One of the officers directed § 87(2)(b) where to stand. § 87(2)(b) replied that he was crossing the street and leaving. PO Gordon told him that he could not cross the street. § 87(2)(b) turned, and walked across the street towards the park. He put up his hands and complied with an order to walk across the street, and then he felt officers tackle him. He did not know which officers did so, because his back was to the officers. § 87(2)(b) landed on his face with his hands underneath him and due to his positioning, he could not identify any officers.

§ 87(2)(b) observed § 87(2)(b) attempt to walk up the block. Two officers ran up to him and tackled him by jumping on him. The officers threw § 87(2)(b) to the ground and he landed on his face. § 87(2)(b) did not cooperate with providing a sworn testimony (BR11). § 87(2)(b) and § 87(2)(b) did not observe who tackled § 87(2)(b) to the ground.

PO Gordon testified that he asked § 87(2)(b) to get back on the sidewalk and told him that he was trying to disperse the crowd. § 87(2)(b) replied with profanity that PO Gordon could not tell him what to do and that he would do what he wanted as it was not illegal to be on the streets if he did not commit a crime or cause traffic. PO Gordon and PO Gutierrez told § 87(2)(b) to move to the sidewalk multiple times. § 87(2)(b) refused to comply and walked to the front of the police vehicle. Which PO Gordon noted was disorderly conduct for impeding vehicular and pedestrian traffic. PO Gordon exited his vehicle while § 87(2)(b) was in the middle of the street, to make sure § 87(2)(b) went to the sidewalk. There was traffic at that time. PO Gordon believed § 87(2)(b) tried to block traffic and decided to arrest him for disorderly conduct. PO Gordon and PO Gutierrez repeatedly gave orders to get on the sidewalk. § 87(2)(b) tried to run and flailed his arms.

PO Gutierrez' testimony was largely consistent with PO Gordon's. PO Gutierrez and PO Gordon were consistent that they each grabbed one of § 87(2)(b)'s arms and that § 87(2)(b) tried to drop his body to the ground. PO Gutierrez and PO Gordon denied having tackled, jumped or slammed § 87(2)(b) to the ground.

When PO Sardar arrived, § 87(2)(b) was walking back and forth in the middle of the street of West 129th Street and St. Nicholas Avenue. Officers tried to get § 87(2)(b)'s arms. § 87(2)(b) started to move his hands back and forth in front of his face. Officers told § 87(2)(b) to stop resisting. When additional units arrived with their lights activated, § 87(2)(b) laid himself on the ground. PO Sardar did not know if any officers made physical contact with § 87(2)(b) as he went to the ground. PO Sardar did not see any officer tackle § 87(2)(b) jump on his back or slammed him onto the ground.

PO Viola did not know how § 87(2)(b) got on the ground.

PO Gordon reported that no forcible takedown was used on TRI-§ 87(2)(b) (BR05).

It is undisputed that § 87(2)(b) ultimately ended up on the ground, with his face and stomach towards the ground. The officers are consistent that § 87(2)(b) put himself on the ground, while § 87(2)(b) and § 87(2)(b) stated that officers brought him to the ground.

§ 87(2)(g)

Allegation (D) Force: Police Officer Christopher Gordon used physical force against § 87(2)(b)

Allegation (E) Force: Officers used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b)'s arms and hands were underneath him while he was on the ground and as the officers attempted to handcuff him.

§ 87(2)(b) stated that after he was tackled, unidentified officers punched and kicked him. He felt multiple punches to his face. He denied doing anything with his body while he was on the ground. His hands were underneath his stomach while he was on the ground due to how he was tackled to the ground. § 87(2)(b) screamed for the officers to stop hitting him. An officer told him to stop resisting but no officer ever gave instructions or order to give his hands.

§ 87(2)(b) did not see any officer kick § 87(2)(b). Officers attempted to pull § 87(2)(b)'s arms behind his back. § 87(2)(b) did not do anything with his body while officers held him down. § 87(2)(b) made these observations from approximately 25 feet away. He did not do anything with his body.

When § 87(2)(b) observed the incident, an officer had their hand over § 87(2)(b)'s face, pushing it into the cement. Officers told § 87(2)(b) to be still. § 87(2)(b) did not see him moving. § 87(2)(b) did not see any officer punch or kick § 87(2)(b). § 87(2)(b) observed this from approximately two car lengths away.

§ 87(2)(b) observed officers strike § 87(2)(b) approximately two or three times. Officers kicked him twice. § 87(2)(b) could not describe any of the officers that struck or kicked him. § 87(2)(b) did not do anything with his body and remained still the entire time. § 87(2)(b) observed this from approximately 15-20 feet away.

The officers are consistent that § 87(2)(b) resisted arrest, that he would not provide his hands so that he could be handcuffed and that he was given multiple verbal commands to stop resisting and to give officers his hands. PO Gordon, PO Gutierrez, PO Sardar and PO Viola are consistent that they did not kick § 87(2)(b).

PO Gordon testified that he and PO Gutierrez tried to grab § 87(2)(b)'s arms. § 87(2)(b) flailed his legs and moved his arms. Other officers held him down and PO Gordon and PO Gutierrez continued trying to grab his arms. § 87(2)(b) kicked and squirmed by moving his body so he was never in the same position. PO Gordon tried to punch his arm into § 87(2)(b)'s chest to get under § 87(2)(b)'s arm to "crow bar his arm out," and to gain compliance. PO Gordon did not strike his chest more than twice. § 87(2)(b) did not comply and continued to lay on his arms. PO Gordon did not see any other officer use any more force aside from trying to grab his arms. PO Gutierrez was largely consistent with PO Gordon but he did not see an officer punch or kick § 87(2)(b). PO Gutierrez did not punch § 87(2)(b).

PO Sardar stated that § 87(2)(b) told the officers that he was not complying, to do whatever they had to do and told them he was not going to jail. § 87(2)(b) told the officers that he was not going to let them handcuff him or take his wrists out so they could handcuff him. PO Sardar tried to pull § 87(2)(b)'s arms from underneath him. PO Sardar did not punch § 87(2)(b).

When PO Viola arrived, PO Gordon and PO Gutierrez moved around with § 87(2)(b) on the ground, who clenched his arms and rolled around on the ground. Officers told § 87(2)(b) to stop resisting multiple times. He did not comply. Aside from rolling around, PO Viola did not see the officers take any other physical actions. PO Viola did not punch § 87(2)(b) and he did not see any other officer do so.

§ 87(2)(b)'s medical records noted that when he was admitted on § 87(2)(b), he had abrasions to his hands and the right side of his face. He returned to the hospital the following day and the medical records indicated that he had an old abrasion on the right knee and left elbow. There was also an abrasion on his upper right forehead (BR10).

Force may be used when it is reasonable to ensure the safety of a member of service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to

prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. In determining whether the use of force is reasonable, members of the service should consider a number of factors Patrol Guide Section 212-01(BR02).

When § 87(2)(b) was initially placed under arrest, he was the only person officers tried to apprehend and he was not being arrested for a violent crime. It is disputed by the civilians whether § 87(2)(b) did anything with his body, other than lay on his hands, while officers tried to restrain him on the ground. PO Gordon did not state that he suspected § 87(2)(b) of being under the influence of any narcotic that would affect his pain tolerance. While there was a crowd, PO Gordon did not describe anyone in the crowd as hostile.

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§ 87(2)(b) could not describe any of the officers that kicked him or punched him in his face. § 87(2)(b) could not describe the officer that he alleged kicked § 87(2)(b). § 87(2)(b) did not see any officer punch or kick § 87(2)(b).

PO Gordon, PO Gutierrez, PO Sardar, and PO Viola denied they kicked § 87(2)(b). And all but PO Gordon, denied having punched § 87(2)(b). Sgt. Ramos arrived after § 87(2)(b) was handcuffed and he did not interact physically with § 87(2)(b). He did not see any officer interact physically with § 87(2)(b), § 87(2)(b), § 87(2)(b).

§ 87(2)(g)
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Allegation (F) Force: Police Officer Kevin Viola used a Taser against § 87(2)(b)

It is undisputed that PO Viola tasered § 87(2)(b).

§ 87(2)(b) denied doing anything with his body on the ground other than lying on his hands. He was told to stop resisting. He did not hear any officer warn him that he would be tasered. § 87(2)(b) heard an officer say, "Taser him," more than once and then felt the charge of the Taser. He was face down on the ground at the time he was tasered. § 87(2)(b) went limp and officers pulled his hands from underneath him and handcuffed him.

§ 87(2)(b) nor § 87(2)(b) heard an officer warn § 87(2)(b) that he would be tasered, prior to PO Viola tasered him. All three witnesses were consistent that § 87(2)(b) was not actively resisting. § 87(2)(b) and § 87(2)(b) are consistent that the incident lasted approximately eight minutes. Specifically, § 87(2)(b) stated that it took officers five or six minutes to handcuff § 87(2)(b).

PO Gordon stated that § 87(2)(b) was not handcuffed after he punched him in the chest and continued to lay on his hands. PO Gordon testified that after he told § 87(2)(b) he would be tasered, PO Viola took out his Taser. PO Viola pointed the light of the Taser at § 87(2)(b). The officers backed up and got off § 87(2)(b). PO Viola and PO Gordon

told § 87(2)(b) at least four times that he would be tasered and ordered him to give them his hands. § 87(2)(b) refused to provide his hands. PO Viola deployed the taser prongs into § 87(2)(b)'s back while he was face down, causing his arms to come out [from underneath him]. PO Gutierrez was consistent with PO Gordon that PO Viola issued multiple verbal warnings that § 87(2)(b) would be tasered if he did not put his hands behind his back. After he was tasered, his arms opened immediately and PO Gordon and PO Gutierrez handcuffed him.

PO Viola told § 87(2)(b) approximately three times that if he did not stop resisting, he was going to be tasered. § 87(2)(b) did not comply. PO Viola took his taser cartridge off the taser and conducted a spark test-so that the current of electricity was both visible and audible and a red laser was pointed at § 87(2)(b) to gain his compliance. The spark test and laser did not appear to trigger any change in § 87(2)(b)'s behavior. § 87(2)(b) continued to resist by rolling around and clenching his arms. PO Viola then told § 87(2)(b) he was going to be tasered. PO Viola repeated the word "Taser" three times and deployed the taser into § 87(2)(b)'s back while he was face down on the ground. PO Viola decided to deploy the taser. After the Taser was deployed § 87(2)(b) stopped resisting. PO Sardar's testimony was consistent with PO Viola's.

Sgt. Ramos did not witness this portion of the incident because when he arrived § 87(2)(b) was handcuffed.

TRI § 87(2)(b) was reported by PO Viola (BR06). He reported having used a Conducted Electrical Weapon (CEW) against § 87(2)(b). He noted that he used the CEW to overcome § 87(2)(b)'s resistance or aggression, and in defense of other officers. After deploying the CEW § 87(2)(b) stopped resisting.

§ 87(2)(b)'s medical records noted that when he was brought to § 87(2)(b) he had two electrodes in his back (BR10).

A CEW should only be used against someone who is actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons present. It is prohibited to use a CEW in situation that do not require the use of physical force. The patrol guide defines active resisting as physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, pushing or verbally signally an intention to avoid or prevent being taken into or retained in custody, Patrol Guide Section 221-08 (BR09).

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Allegation (G) Force: Police Officer Christopher Gordon used physical force against § 87(2)(b)

Allegation (H) Force: Police Officer Jimmy Gutierrez used physical force against § 87(2)(b)

§ 87(2)(b) stated he was pulled up off the ground, dragged and tossed inside a police vehicle.

§ 87(2)(b) and § 87(2)(b) did not see whether the officers dragged § 87(2)(b) to the police vehicle or how they put him in the car. As per § 87(2)(b) was picked up and placed inside a police vehicle. He did not observe any officer drag § 87(2)(b)

PO Gordon and PO Gutierrez are consistent that they handcuffed and brought § 87(2)(b) back to a police vehicle where he was placed into the vehicle. He was not dragged to or thrown inside the police vehicle. Neither PO Sardar nor PO Viola saw § 87(2)(b) dragged to or thrown inside a police vehicle.

The officers and § 87(2)(b) are consistent that they did not see § 87(2)(b) dragged to or thrown inside the police vehicle. PO Gutierrez and PO Gordon brought § 87(2)(b) to a police vehicle and placed him inside, denied having dragged him or thrown him inside the police vehicle.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR08).
- PO Viola has been a member of service for three years. He has been a subject in four CCRB cases and 12 allegations, none of which have been substantiated.
- Police Officer Gordon has been a member of service for six years. This is the first CCRB complaint to which he has been a party.
- Police Officer Gutierrez has been a member of service for four years. This is the first CCRB complaint to which he has been a party.
- Police Officer Viola has been a member of service for three years and has been a subject in four CCRB complaints and 12 allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a notice of claim with the City of New York claiming he was punched, kicked, tackled, tasered by officers. He stated that they attempted to murder him, used excessive force, malicious prosecution, were not professional, were racist, abused their power. As a result, he cannot get fully erect or aroused and experiences numbness in his body if he sits or stands too long, gets sleepy easily and very quickly and suffers constant headaches. He is seeking one billion dollars as redress (BR04). It is unknown if a 50H hearing was held or is scheduled.

- § 87(2)(b)

Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date
Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date